Roosevelt Raceway certified check. He agreed to do so (Tr. 627–628). Soon, two men came with two checks for $7,000 and $13,000 respectively. He saw petitioner give the men "a couple of bills" (Tr. 642), two of which were $50 bills (Tr. 643–645). Herbst, accompanied by Stein, then went to a bank where he cashed the checks and gave the money to petitioner (Tr. 631–632). Petitioner then gave Stein $400 or $500 (Tr. 642) of which Stein gave $200 to Herbst. As Herbst departed, petitioner stated to him "If I get any more twins, you could have the checks" (Tr. 646). Herbst further testified that in the middle of 1965, petitioner asked Herbst to cash a twin double for him (Tr. 652).

ARGUMENT

Petitioner contends (Pet. 5) that the trial court should have excluded the Herbst testimony on the grounds that it had no probative value and was highly prejudicial. The question is not deserving of plenary consideration; moreover, we submit that the trial judge acted well within his discretion in admitting the testimony.

The testimony of Herbst was clearly relevant, as it further tended to prove the government's contention that petitioner was engaged in a scheme to defraud the government in the cashing of winning twin double

tickets. Petitioner's contention that the testimony of defense witness Stallone refuted the inference that the winning tickets cashed by Herbst belonged to petitioner raises only a question of fact, well within the province of the jury. Finally, the lapse of time between the transactions reported by the other witnesses and the Herbst transactions does not affect the admissibility of the Herbst testimony. The indictment charged a continuing conspiracy to defraud the government up to October 1966, a date well past the date of the transactions reported by Herbst.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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